



pre-filing injunction to his complaint or motion for leave to proceed *in forma pauperis* as required by the order of this Court. For this reason alone, the complaint should be dismissed as to Plaintiff McNair. Furthermore, the undersigned recommends that the complaint be dismissed as frivolous.

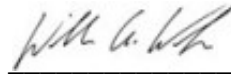
When a plaintiff seeks to proceed *in forma pauperis* in a civil action, the court must review the complaint and dismiss any case that is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). A “frivolous” claim lacks “an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” *Id.* at 327.

The standard used to evaluate the sufficiency of the pleading is flexible, and a pro se complaint, however inartfully pled, is held to less stringent standards than formal pleadings drafted by attorneys. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). *Erickson*, however, does not undermine the “requirement that a pleading contain ‘more than labels and conclusions.’” Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)); see also Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-52 (2009); Coleman v. Md. Ct. of Appeals, 626 F.3d 187, 190 (4th Cir. 2010).

Here, Plaintiffs allege that Defendant “violated the 8<sup>th</sup> amendment clause cruel and unusual punishment.” They offer no facts, however, to support their legal conclusion that Defendant violated their rights under the Eighth Amendment. As such, the complaint sets forth nothing more than “labels and conclusions.” Giarratano, 521 F.3d at 304 n.5. Because they articulate no set of facts stating a cognizable claim, Plaintiffs’ complaint should be dismissed for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B).

For these reasons, the undersigned RECOMMENDS that Plaintiffs' motions to proceed *in forma pauperis* (DE-1, DE-2) be GRANTED, but that the complaint be DISMISSED as frivolous.

SO RECOMMENDED in Chambers at Raleigh, North Carolina on Thursday, December 20, 2012.

A handwritten signature in dark ink, appearing to read "William A. Webb", is positioned above a horizontal line.

WILLIAM A. WEBB  
UNITED STATES MAGISTRATE JUDGE